

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0318
SALES/USE TAX
For Years 1998 and 1999**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax – Transfer of property to an exempt not-for-profit organization

Authority: None

Taxpayer protests the imposition of gross retail tax on items purchased that were subsequently turned over to a not-for-profit organization for no consideration.

II. Sales/Use Tax – Equipment used in farming

Authority: IC 6-2.5-5-2

Taxpayer protests the imposition of gross retail tax on items purchased for use in farming.

III. Sales/Use Tax – Equipment used in constructing public roadways

Authority: IC 6-2.5-5-7

Taxpayer protests the imposition of gross retail tax on items used in constructing roadways for a county municipality.

STATEMENT OF FACTS

Taxpayer is for-profit real estate developer located in Indiana. Taxpayer has purchased many items exempt from gross retail tax under the assumption that these items were exempt either as items transferred to a homeowner's association or as used in farming.

I. Sales/Use Tax – Transfer of property to an exempt not-for-profit organization

DISCUSSION

Several of the items picked up on audit as being subject to unpaid gross retail tax are contended, by taxpayer, to have been transferred to an exempt not-for-profit organization. Taxpayer believes

that, because this organization would have been able to purchase said items exempt from gross retail tax, it should also be able to purchase those same items in an exempt manner. Taxpayer states that it acts as an agent for the exempt organization.

However, taxpayers may not use the exemptions of other entities; therefore, only the exempt entity may purchase items and be exempt from gross retail tax.

FINDINGS

The taxpayer is respectfully denied.

II. Sales/Use Tax – Equipment used in farming

DISCUSSION

Taxpayer claims that other items picked up on audit were purchased for use in farming. Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities. IC 6-2.5-5-2(a). According to IC 6-2.5-5-2(b), transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

- (1) The person acquiring the property acquires it for use in conjunction with the production of food or commodities for sale;
- (2) The person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food or commodity production; and
- (3) The machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

Taxpayer claims that, in its business, it purchases equipment used for farming and development. Taxpayer claims that the equipment is used for the maintenance of fields. It claims that it is in business with farmers with whom it participates in crop sharing along with sharing in the rent and expenses.

The fact that taxpayer claims no revenues from agricultural activities tends to show that taxpayer is not itself engaged in any of the activities enumerated in IC 6-2.5-5-2(b). Regardless of whether or not taxpayer shares in the revenues and expenses of farming with those who actually tend the fields, the fact remains that taxpayer itself does not do any farming. Taxpayer again is trying to avail itself of the exemptions of a third party, and again there is no exemption to the gross retail tax.

FINDINGS

The taxpayer is respectfully denied.

III. Sales/Use Tax – Equipment used in constructing public roadways

DISCUSSION

Taxpayer claims that certain items picked up on audit were used to construct roadways, curbs, paving, and drainage that were subsequently turned over to the county, which maintains them. Under IC 6-2.5-5-7, transactions involving tangible personal property are exempt from the state gross retail tax if:

- (1) The person acquiring the property is in the construction business;
- (2) The person acquiring the property acquires it for incorporation as a material or integral part of a public street or of a public water, sewage, or other utility service;
- (3) The public street or public utility service into which the property is to be incorporated is required under a subdivision plat, approved and accepted by the appropriate Indiana political subdivision; and
- (4) The public street or public utility is to be publicly maintained after its completion.

Taxpayer is a real estate development group. While these groups may not directly engage in construction activities, by their very nature such groups are involved to some degree in the business of constructing homes. Therefore, taxpayer meets the first part of the statute.

Taxpayer has put into issue only those items incorporated into the roads, curbs, paving, and drainage, and these items pass the second portion of the statute. Taxpayer has provided the Department with documentation that shows that the public streets into which the property was incorporated was required under a subdivision plat, approved and accepted by an appropriate Indiana political subdivision. And finally, taxpayer has provided the Department with documentation that the public street is to be publicly maintained after its completion.

Having met all four of the requirements of the statute, taxpayer is entitled to the exemption for any items for all tangible personal property incorporated into these streets.

FINDINGS

The taxpayer is sustained.